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GORDON A. LIVENGROOD (1981 - 2001)

September 28, 2010

Office of General Counsel
Attention: Jeff S. Jordan
Federal Election Commission
999 "E" Street N.W.
Washington, DC 20463

Re: MUR 6358

Dear Mr. Jordan:

I represent Ms. Jaime Herrera and her authorized committee, Herrera for Congress, in connection with the above-referenced MUR. Accompanying this letter is the Declaration of Casey Bowman, Treasurer and Campaign Manager of Herrera for Congress. The Complaint filed is without merit and should be dismissed. There has been no coordination between the ad's sponsor and the Herrera campaign. The Complaint speculates that because individuals who appeared in an advertisement sponsored by Americans for Prosperity ("AFP") have endorsed Ms. Herrera for Congress, or affiliated with the same political party, or worked on past state legislative campaigns, that there has been coordination between AFP and the Herrera campaign. That is not a basis for treating the ad as coordinated under the FECA.

AFP'S AD WAS NOT A "COORDINATED COMMUNICATION."

A public communication is not treated as a "coordinated communication" unless all the requirements set out in 11 C.F.R. 109.21 are met. The AFP public communication includes no activity falling within the "conduct" standards of 11 C.F.R. 109.21(d), precluding treatment as a coordinated communication.

The Complaint includes no facts to indicate that Ms. Herrera or anyone acting on her behalf suggested AFP run the ad, was materially involved in decisions about the ad, had

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substantial discussions in which information material to the advertisement was conveyed or used candidate or party information to produce the ad for AFP.¹ Instead, the Complaint is based on factual allegations that:

- Three persons appearing in AFP's ad have endorsed Ms. Herrera;
- Two of them are also members of the same political party as Ms. Herrera; and
- One person appearing in the ad ran a past state legislative campaign for Ms. Herrera.

The Complaint does not allege that the AFP ad was created, produced or distributed at the request or suggestion of Ms. Herrera.² The Declaration from Mr. Bowman makes clear that Ms. Herrera neither requested nor suggested a communication by AFP. The first "conduct" standard is absent. 11 C.F.R. 109.21(d)(1).

Similarly, the Complaint makes no allegation that Ms. Herrera was materially involved in decisions regarding the communication's content, intended audience, means or mode, media outlets used, timing, frequency, size or prominence of the AFP ad. Mr. Bowman's testimony is clear that Ms. Herrera had no material involvement in the ad. Ms. Herrera had no discussion with anyone from AFP regarding the communication at all, much less a "substantial" discussion. The second and third "conduct" standards are also absent. 11 C.F.R. 109.21(d)(2)-(3).

The Complaint does allege a prior employment relationship between Mr. Christopherson and Ms. Herrera's legislative campaign. That campaign, in 2008 is well outside the 120 day look-back in the Commission's regulations and for a nonfederal office. Mr. Christopherson has been neither an employee nor an independent contractor of Ms. Herrera in the last 120 days, or at any time in connection with her federal campaign. Information obtained in connection with running for state legislative office, with different issues, different voters, and in a past election cycle, does not constitute coordination under 11 C.F.R. 109.21(d). As the Commission noted in its explanation and justification for the current version of the "conduct" standards, campaign information has a very short shelf life. The conduct standard relating to former employees or independent contractors is unmet.

The common vendor contact standard is also absent. With one exception, none of Ms. Herrera's vendors who have performed the services described in 11 CFR 109.21(d)(4)(ii) (and thereby in a position to acquire information about campaign plans, projects, activities or needs) have provided services to AFP. The lone common vendor, Desumo Strategies, LLC has advised

¹ The care devoted to factual accuracy and sufficiency is illustrated in part by the complainant's failure to correctly spell Ms. Herrera's name and by its identification of a former treasurer as respondent. The Herrera for Congress Committee supplemented its filings with the Commission in June to identify its new treasurer, Casey Bowman. The August Complaint does not reflect that change. The complaint also misspells Keith Huff's name (shown on the Herrera website as an endorser), rendering it "Keith."

² For ease of reference, Ms. Herrera, individually, her authorized committee and her agents will be referred to collectively as "Ms. Herrera" unless the context requires otherwise.

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Ms. Herrera's campaign that it provided services to AFP under the terms of AFP's "firewall" and in accordance with the vendor's own firewall.

No part of the conduct standard is satisfied here. The language of the Complaint itself is heavy on speculation. The fact individuals may have endorsed Ms. Herrera does not create a coordinated communication. In the context of federal elected officials, the Commission has expressly adopted the position that a statement of endorsement does not make a communication "coordinated." There is no reason to do so here.

The Complaint should be dismissed promptly.

Very truly yours,

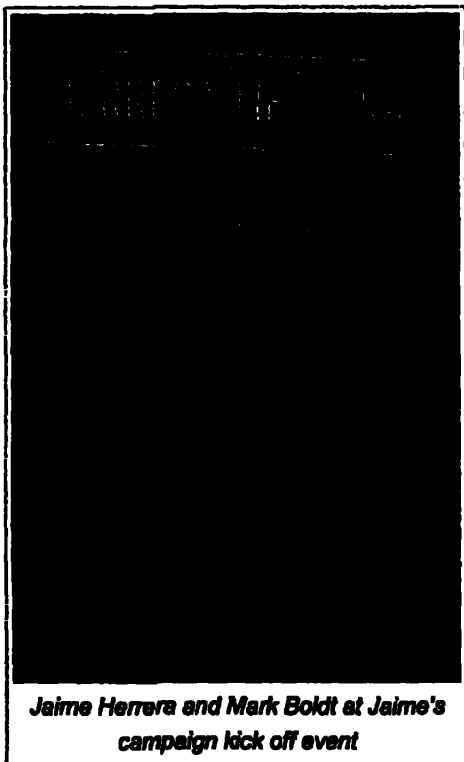
LIVENGOOD, FITZGERALD &
ALSKOG, PLLC


John J. White, Jr.

JJW/tw
Enclosure: a/s
cc: Client (w/encl.)

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HOME ABOUT JAIME VIDEOS GALLERY ENDORSEMENTS NEWS & EVENTS ISSUES GET INVOLVED



Jaime Herrera and Mark Boldt at Jaime's campaign kick off event

Former U.S. Senator Slade Gorton:

"Jaime will win this election and be the next Member of Congress from the 3rd District. She is well-qualified and will be an effective advocate for Southwest Washington. I am pleased to give her my endorsement."

Commissioner Marc Boldt:

"Jaime has a record of success when it comes to helping Washingtonians with their problems. She grew up in this area and she understands

Organizations

National Federation of Independent Business
The Columbian Newspaper
Cowlitz County Republican Party
Pacific County Republican Party
Wahkiakum County Republican Party
Washington Association of Realtors
Washington State Farm Bureau PAC
Susan B. Anthony List Candidate Fund
Associated Builders and Contractors of Western Washington PAC
Washington Credit Union League
National Rifle Association (NRA)

Officials

Slade Gorton, Former U.S. Senator
Cathy McMorris Rodgers, U.S. Congresswoman, WA 5th Congressional District
Linda Smith, Former U.S. Congresswoman, WA 3rd Congressional District
Marc Boldt, Clark County Commissioner
Sam Reed, Secretary of State
Joseph Zambelli, State Senator, 18th Legislative District
Ed Orcutt, State Representative, 18th Legislative District
David Taylor, State Representative, 15th Legislative District
Kevin Parker, State Representative, 8th Legislative District
Doug Sutherland, former Commissioner of Public Lands
Lee Wells, Ridgefield Councilman
Scott Higgins, Camas Councilman
Scott Hughes, Commissioner, Port of Ridgefield
Jon Russell, Washougal Councilman
Joe Melroy, Commissioner, Port of Ridgefield
Ron Dinkus, Washougal School Board Member

SUPPORT W
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FIND JAIM